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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Lamar Damar Douglas, Jr.,
10 Plaintiff,

No. CV-25-00015-TUC-SHR

11 v.

ORDER

12 Ryan Thornell, et al.,
13 Defendants.
14

15 Plaintiff Lamar Damar Douglas, Jr., who is confined in the Arizona State Prison
16 Complex (ASPC)-Eyman, has filed a pro se civil rights Complaint pursuant to 42 U.S.C.
17 § 1983 (Doc. 1) and an Application to Proceed In Forma Pauperis (Doc. 2). The Court will
18 order Defendant Lopez to answer Count Three, order Defendant Terran to answer Count
19 Five, and will dismiss the remaining claims and Defendants without prejudice.

20 **I. Application to Proceed In Forma Pauperis and Filing Fee**

21 The Court will grant Plaintiff's Application to Proceed In Forma Pauperis. 28
22 U.S.C. § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C.
23 § 1915(b)(1). The Court will assess an initial partial filing fee of \$14.32. The remainder
24 of the fee will be collected monthly in payments of 20% of the previous month's income
25 credited to Plaintiff's trust account each time the amount in the account exceeds \$10.00.
26 28 U.S.C. § 1915(b)(2). The Court will enter a separate Order requiring the appropriate
27 government agency to collect and forward the fees according to the statutory formula.

28

II. Statutory Screening of Prisoner Complaints

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised legally frivolous or malicious claims, failed to state a claim upon which relief may be granted, or sought monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1)–(2).

A pleading must contain a "short and plain statement of the claim *showing* that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does not demand detailed factual allegations, "it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.*

"[A] complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id.* (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* "Determining whether a complaint states a plausible claim for relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 679. Thus, although a plaintiff's specific factual allegations may be consistent with a constitutional claim, a court must assess whether there are other "more likely explanations" for a defendant's conduct. *Id.* at 681.

But as the United States Court of Appeals for the Ninth Circuit has instructed, courts must "continue to construe *pro se* filings liberally." *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). A "complaint [filed by a *pro se* prisoner] 'must be held to less stringent standards than formal pleadings drafted by lawyers.'" *Id.* (quoting *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam)).

....

III. Complaint

In his ten-count Complaint,¹ Plaintiff sues Arizona Department of Corrections, Rehabilitation and Reentry (ADCRR) Director Ryan Thornell; ASPC-Tucson employees Warden John McAdorey, Cimarron Unit Deputy Warden Defranko and Assistant Deputy Warden Lewis, Santa Rita Unit Deputy Warden Arredondo, Sergeant P. Lopez, and Correctional Officers (COs) II M. Kowalski and Terran; ASPC-Eyman Browning Unit Complex employees Warden Ibarra, Deputy Warden Rodgers, Sergeant Lohr, and CO II Earwood; and unidentified "Detention Correction Officers/Personnel" at ASPC-Tucson and ASPC-Eyman. Plaintiff names each Defendant in his or her official and individual capacities. Plaintiff asserts claims regarding excessive force, retaliation, property, a "hate crime," conditions of confinement, medical care, and privacy. He seeks declaratory and monetary relief, a protection order and a contempt order, and appointment of a receiver to "watch over" him and ADCRR personnel.

In **Count One**, Plaintiff alleges the following:

On December 13, 2023, Defendant Kowalski aggressively and violently shoved Plaintiff at the front gate of yard 3, causing Plaintiff to "violently slam to the ground" and hit his head on the concrete. (Doc. 1 at 4.) Plaintiff felt throbbing pain in the back of his head and begged for medical attention. (*Id.*) Plaintiff apparently was taken to the medical unit, where he was told he had a concussion and not to sleep that night. (*Id.*) Plaintiff also had cuts and bruises on his elbow and was given ibuprofen. (*Id.*) Plaintiff claims he was not violating "any written policy []or trying to e[s]cape or putting any other staff or inmate in any danger." (*Id.*)

On February 6, 2024, while Plaintiff was going to the legal library, Defendant Kowalski "got in front of" Plaintiff and told him he could not go to the library. (*Id.*)

¹ Plaintiff identifies the bases for the Court's jurisdiction over the Complaint as 42 U.S.C. § 1983, and 28 U.S.C. §§ 1331, 1343(a), 2201, 2202, 2283, and 2284. Section 2283 concerns a federal court's authority to issue an injunction against state proceedings. Section 2284 requires a district court of three judges to be convened when required by an Act of Congress or when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body. Sections 2283 and 2284 have no relevance to Plaintiff's claims.

1 Defendant Kowalski said, "[N]o lawsuit, paralegal school or meeting up of the fags today."
2 (*Id.*) Defendant Kowalski "g[ot] emotionally involved and trie[d] to trip [Plaintiff] by
3 stomp[ing] on [the] back of [Plaintiff's] right he[el]," causing Plaintiff to stumble. (*Id.*)
4 Plaintiff requested a supervisor, and Defendant Kowalski initiated an Incident Command
5 System (ICS). (*Id.*) Plaintiff "walk[ed] on free accord straight up to any other staff to
6 protect" him from Defendant Kowalski's "violence." (*Id.*) Plaintiff "cuff[ed] up" with "no
7 issues," and Defendant Kowalski took Plaintiff to the sergeant's office. (*Id.*)

8 On the way to the sergeant's office, Defendant Kowalski "knowingly secure[d]"
9 Plaintiff, although Plaintiff had "request[ed] to get away for safety reasons." (*Id.*)
10 Defendant Kowalski "knowingly and intentionally pushe[d] (shove[d])" Plaintiff to the
11 ground while he was cuffed and secured. (*Id.*) Plaintiff's hand "c[ame] lo[o]se," and he
12 "again violently smack[ed] the ground with nothing to help break [his] fall or any staff to
13 catch or help." (*Id.* at 4–5.) While Plaintiff was on the ground, he rolled over. (*Id.* at 5.)
14 Defendant Kowalski was "just standing over [Plaintiff] with this sm[i]rk on his face." (*Id.*)
15 Another officer stepped in, helped Plaintiff off the ground, and told Defendant Kowalski
16 to "stand down." (*Id.*) Plaintiff's face and left shoulder were painful and scraped from the
17 fall. (*Id.*)

18 In the sergeant's office, Plaintiff told staff Defendant Kowalski had "pushed" and
19 "ass[a]ulted" him. (*Id.*) Staff tried to tell Plaintiff, the sergeant, and Special Security Unit
20 staff Defendant Kowalski did not push Plaintiff, and Plaintiff had fallen. (*Id.*) "Staff"
21 threatened Plaintiff, saying Plaintiff "need[ed] to stop saying" Defendant Kowalski had
22 assaulted him. (*Id.*) Plaintiff asked why Kowalski was allowed to escort him after he had
23 said Kowalski "was the one [Plaintiff did not] feel safe around and had a history of
24 ass[a]ulting [Plaintiff] already." (*Id.*) At that point, Defendant Kowalski came into the
25 sergeant's office and heard Plaintiff say Kowalski had pushed him. (*Id.*) Kowalski said,
26 "I only pushed you [be]cause you were trying to push me toward walking in the mud."
27 (*Id.*) Staff heard Kowalski and told him to step back outside immediately. (*Id.*) According
28 to Plaintiff, staff have boots or shoes that can "take mud without causing any harm, damage

1 or wet sock issue meaning there was no valid reason Kowalski [could not] have walked in
 2 some mud so he knowingly pushed/ass[a]ulted" Plaintiff or "horseplayed" with a prisoner
 3 "unwillingly to avoid some mud."² (*Id.*)

4 Staff obtained medical attention for Plaintiff and kept him in a "cage . . . as a way
 5 of saying stop saying he 'assaulted you.'" (*Id.*) "[T]hey" tried to find a reason to "justify
 6 actions," but Plaintiff did not escape, violate any written policy, or put any prisoners or
 7 staff in any harm or danger. (*Id.*)

8 As his injury, Plaintiff alleges he suffered cuts, bruises, back and nerve pain, a
 9 concussion, mental anguish, and physical damage. (*Id.* at 4.)

10 In **Count Two**, Plaintiff alleges the following:

11 On July 25, 2024, while ADCRR staff were locking down prisoners in Plaintiff's
 12 pod, prisoners approached an officer and "told him 'to leave the pod.'" (*Id.* at 6.) The
 13 officer "complied with last inmate directive," and as the officer exited the pod, he looked
 14 back and saw some prisoners assaulting another prisoner. (*Id.*) Plaintiff saw the assault
 15 and realized the victim was his cellmate. (*Id.*) Plaintiff told the officer to "do something
 16 to help" his cellmate, but the officer said he could not help the cellmate. (*Id.*) Plaintiff told
 17 the officer to "open the door," which the officer did. (*Id.*) Plaintiff "charge[d] into the
 18 fight" and threw prisoners off his cellmate, although he "never punched anyone or got
 19 violent with anyone." (*Id.*) Plaintiff saw his cellmate "in a ball with blood everywhere."
 20 (*Id.*) While Plaintiff stood over him, asking if he was okay, Cimarron Unit personnel "came
 21 running in." (*Id.*) Staff "never said anything" and "just fired [a] ta[s]er" at Plaintiff "while
 22 letting off two cans of ma[c]e (tear gas)." (*Id.*) Staff never said "stop" or "get on the
 23 ground." (*Id.*) Plaintiff was shot in the back and fell face-first into the wall and then fell
 24 to the ground. (*Id.*) Plaintiff was the only prisoner who was tased and at whom staff aimed

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 26
 27 ² The Court notes, on February 19, 2024, Plaintiff was found guilty of resisting or
 28 disobeying a verbal or written order, a major disciplinary violation, with a violation date
 of February 6, 2024. *See* <https://corrections.az.gov/inmate-data-search> (search by Inmate
 Number 324471) (last accessed Feb. 10, 2025).

1 both cans of mace. (*Id.*) Staff threatened Plaintiff "with more" if he did not stop moving.
2 (*Id.*)

3 Staff asked Plaintiff's cellmate what happened. (*Id.*) Plaintiff's cellmate said
4 Plaintiff did not do anything and was the only one helping. (*Id.*) Staff realized Plaintiff
5 was telling the truth and realized they had "knowingly and intentionally sho[ut] the [black]
6 guy and [were] wrong." (*Id.*) A sergeant came to Plaintiff and told him, "We are sorry[,]
7 so[,] so sorry." (*Id.*) As his injury, Plaintiff alleges he had two "holes" in his back from
8 the taser prongs, bruises and cuts on his right side from the fall, back pain, nerve damage
9 and mental anguish. (*Id.*) Plaintiff also claims he fears staff will tase and assault him
10 without "getting held accountable." (*Id.*)

11 In **Count Three**, Plaintiff alleges the following:

12 On October 12, 2024, Defendant Lopez and two other officers were inside Plaintiff's
13 cell taking his personal property. (*Id.* at 7.) Plaintiff "informed the officers" his personal
14 property was being taken. (*Id.*) "Staff saw and tried to return it," but Defendant Lopez
15 became belligerent and used vulgar language toward Plaintiff, who was being c[al]m and
16 ethical." (*Id.*) Defendant Lopez then got upset with Plaintiff quoting "policy 501"
17 regarding cell searches and told Plaintiff to "get the 'fuxk' out of here before you get the
18 hammer." (*Id.*) According to Plaintiff, the reference to "the hammer" was a threat of
19 physical violence or "some type of sexual thing." (*Id.*)

20 Defendant Lopez started grabbing Plaintiff's books and exams from the Blackstone
21 Career Institute and then "really started getting aggre[s]sive and combative." (*Id.*) Plaintiff
22 asked Defendant Lopez to put the items down because they were personal. (*Id.*) Defendant
23 Lopez told Plaintiff he was the sergeant and could do whatever he wanted to do, take what
24 he wanted and "just contraband it," and Plaintiff could "gr[ie]ve it to get it back." (*Id.*)
25 Plaintiff entered the doorway to privately speak with Defendant Lopez about his
26 professionalism, ethics, and accountability as sergeant. (*Id.*) Plaintiff told Defendant
27 Lopez this was "all unfair and out of procedure and policy guidelines" and Lopez was
28 failing as a supervisor. (*Id.*) Defendant Lopez said, "ok 'hammer.'" (*Id.*)

1 Defendant Lopez "charge[d] with one hand crossed as to use [his] elbow as [a] ram
 2 and drove it right into" Plaintiff's throat. (*Id.*) Plaintiff retreated and told Defendant Lopez
 3 and the other officers, "get off," and "get him off me." (*Id.* at 8.) At some point, Plaintiff
 4 was "unable to retreat anymore due to top rail being the only step left that would make
 5 [him] go over the top," and, fearing falling over or being thrown over the rail, Plaintiff
 6 "planted [his] retreating foot" and "protected [him]self with enough force to stop"
 7 Defendant Lopez's "charge." (*Id.*) Defendant Lopez fell, and Plaintiff "wrapped
 8 [Defendant] Lopez up," yelling at the other two officers to "get him" so Plaintiff could let
 9 him go. (*Id.*) Plaintiff never made any threatening or harmful contact with Defendant
 10 Lopez while he was "wrapped up." (*Id.*)

11 Without any warning or directive, an officer tased Plaintiff in the back, and Plaintiff
 12 immediately went limp on top of Defendant Lopez. (*Id.*) Plaintiff then fell to the floor,
 13 and Lopez got on top of Plaintiff with his knee on Plaintiff's neck and told Plaintiff "and
 14 population" Plaintiff "hits like a 'bxxxx'" and "should have done more," trying to provoke
 15 Plaintiff to fight or resist more. (*Id.*) The other two officers "just stood by" as Defendant
 16 Lopez got flustered and acted unprofessionally by taking personal "shots" at Plaintiff. (*Id.*)
 17 The other officers "never stepped in[]" to stop Lopez or tell him to calm down because
 18 Lopez was the supervisor, and the other officers were afraid for their jobs. (*Id.*) According
 19 to Plaintiff, Defendant Lopez told the officers, "[W]e need to get our story right." (*Id.*)

20 As his injury, Plaintiff alleges he suffered cuts, bruises, and scrapes and had two
 21 "holes" in his back, nerve pain and damage from being tased twice in 60 days, and mental
 22 pain. (*Id.* at 7.)

23 In **Count Four**, Plaintiff alleges the following:

24 On December 14, 2024, Plaintiff's cellmate needed medical attention. (*Id.* at 9.) An
 25 ICS was activated, and Defendant Earwood and two other non-party officers responded.
 26 (*Id.*) Defendant Earwood "started the interaction very unprofessional[ly]" and told
 27 Plaintiff's cellmate he was only going to the medical unit in a "strap chair." (*Id.*) Plaintiff's
 28 cellmate said he was fine to walk, but Defendant Earwood "wasn't having it" and kept

1 stating, "'chair' or you refuse." (*Id.*) Defendant Earwood turned around and "started telling
 2 other staff to get into tact[ical] positions" and "inmates were going to get violent." (*Id.*)
 3 Plaintiff "heard and requested to spea[]k with a shift supervisor" as soon as possible. (*Id.*)
 4 Defendant Lohr arrived, and Plaintiff asked why there was no camera. (*Id.*) Defendant
 5 Lohr stated there were two other ICSs in progress and the camera was in use. (*Id.*) Plaintiff
 6 explained Defendant Earwood was being belligerent and trying to "provoke inmates" and
 7 "telling staff to take tactical positions." (*Id.*) Plaintiff opened his tablet and "showed policy
 8 and injunction" to Defendant Lohr "about how he was supervisor and was supposed to
 9 make sure orders are being followed." (*Id.*) Defendant Lohr did not "like this," asked
 10 Plaintiff his name, and "walked off." (*Id.*)

11 "They" brought Plaintiff's cellmate back with a camera and recorded staff asking
 12 Plaintiff to cuff up and opening the door, Plaintiff's cellmate entering the cell and having
 13 his handcuffs removed, and the staff leaving. (*Id.*) Plaintiff "yell[ed] for staff to come
 14 back to take off [his] cuffs." (*Id.*) According to Plaintiff, the "custom" is if two prisoners
 15 are cuffed, they are uncuffed at the same time. (*Id.*) Staff "did multiple walks[,] stopping
 16 at [Plaintiff's] cell door," and Plaintiff asked if they could remove the handcuffs, but "they
 17 all ke[pt] walking." (*Id.*) Plaintiff was left handcuffed for seven hours. (*Id.*) Plaintiff's
 18 cellmate had to help Plaintiff eat, drink, and use the bathroom. (*Id.*)

19 As his injury, Plaintiff alleges his wrists were bruised because the cuffs were too
 20 tight, and he suffers post-traumatic stress disorder every time staff tries to handcuff him
 21 because he fears they will "leave them on." (*Id.* at 10.)

22 In **Count Five**, Plaintiff alleges the following:

23 On October 12, 2024, Defendant Terran and another CO II were transporting
 24 Plaintiff to the CDU "pending two-way for another issue with [Defendant] Lopez." (*Id.* at
 25 11.) On the way, Defendant Terran told Plaintiff, "Lopez is my boy[,] you lucky I wasn't
 26 here." (*Id.*) Plaintiff asked, "what do you mean by that[?]" (*Id.*) Terran responded, "You
 27 know what I mean, if I was there I would have beat you." (*Id.*) Plaintiff said, "why would
 28 you get involved[,] that issue is over and no one got jumped[,] he ass[a]ulted me and I

1 protected my[]self. Nothing extra nothing more [than] self[-]defen[s]e." (*Id.*) Defendant
 2 Terran said, "We[]ll what if it was one of your 'boys/homies[?]" (*Id.*) Plaintiff responded
 3 if it was one on one, he would "let it be and tell them shake hands." (*Id.*) Terran said, "naw
 4 we would have just jumped you or I would have hand[]led you alone." (*Id.*) Plaintiff told
 5 Terran, "You[are] being as unprofessional as he was being right now." (*Id.*) Terran told
 6 Plaintiff they were "talking as men no[t] boys" and to "leave the issue off paper if [Plaintiff]
 7 knew what was best for [him]." (*Id.*) Plaintiff was told, "[Y]ou put your hands on one of
 8 us, you[are] lucky all you lose was only your property you have nothing coming." (*Id.*)

9 As his injury, Plaintiff alleges he was threatened and told not to "do any paperwork
 10 on it (grievance)." (*Id.* at 12.) Plaintiff claims "[t]hey only did it as a get back or get even"
 11 to make him afraid for his well-being. (*Id.*)

12 In **Count Six**, Plaintiff alleges the following:

13 On October 12, 2024, Plaintiff was unable to personally pack up his property. (*Id.*
 14 at 13.) Staff radioed yard 3 and told "them" to have Plaintiff's cellmate pack up his
 15 property. (*Id.*) Plaintiff's property did not "show up" for more than two hours. (*Id.*) Under
 16 ADCRR Department Order 909, staff are not permitted to allow other prisoners to pack a
 17 prisoner's property. (*Id.*) According to Plaintiff, it is a "well known custom" for prisoners
 18 to steal or take property that does not belong to them when the owner is being detained by
 19 staff "after getting ta[s]ed" and staff announces a prisoner is not returning to his cell before
 20 the end of the night. (*Id.*) Plaintiff "grieved it," and "they" responded there was no property
 21 in his file. (*Id.*) Defendant Terran told Plaintiff, "you got nothing from us." (*Id.*)

22 Plaintiff alleges staff knowingly and willingly allowed his property to be taken. (*Id.*)
 23 He asserts from November to January, ADCRR has "taken money" from him for property
 24 he does not have when, per staff, all he has on file is a tablet, which is exempt from monthly
 25 charges. (*Id.*) Plaintiff claims on November 20, 2024, he "ordered property," but he never
 26 received it, and "they" charged him for it. (*Id.*) Plaintiff alleges he has spoken with
 27 property staff at Cimmaron Unit and Eyman Complex, but they are "lo[]sing" or
 28 "misplacing" his property with no consequence for their actions. (*Id.* at 14.)

1 In **Count Seven**, Plaintiff alleges the following:

2 Since Plaintiff "learned of [the] injunction" in July 2024, he has "informed the
3 population of the rights and duties of the [] Defendants." (*Id.* at 15.) Plaintiff has submitted
4 informal complaints and grievances regarding staff's failure to abide by the injunction, and
5 staff have responded "close custody 14" was not a part of the subclass. (*Id.*) Plaintiff
6 "would explain . . . per order" he "was included within due to what Defendant was failing
7 to do." (*Id.*) Plaintiff continues to "inform[]" and complain to "[D]efendant" about
8 "knowingly violating injunction." (*Id.*) Since Plaintiff started "holding, informing, [and]
9 gathering information" about how "Defend[a]nt" is violating the injunction, he has been
10 moved from unit to unit, tased twice, and assaulted by staff twice, and his property has
11 been taken, lost, or destroyed. (*Id.*) Plaintiff has also received multiple incident reports to
12 try to "max" him out and has had seven tickets overturned. (*Id.*) Plaintiff has requested
13 reclassification for a new "IR/classification score (per injunction)," but "Defendant" has
14 stated Plaintiff is "misinformed" and he "has only one classification score." (*Id.*)

15 In **Count Eight**, Plaintiff alleges from January 2024 to the present, he has been
16 singled out because he has been an advocate for the LGBTQI community on every unit he
17 has been on. (*Id.* at 16.) Plaintiff and another prisoner were moved from Santa Rita Unit
18 to Rincon Unit, and CO IV Payne and CO II Barker—whom Plaintiff has not named as
19 Defendants—singled Plaintiff and the other prisoner out every chance they had by writing
20 disciplinary tickets and activating ICSs. (*Id.*) Staff and prisoners knew Plaintiff and the
21 other prisoner were a couple, but staff only singled them out, and did not punish "the
22 others" or other LGBTQI prisoners who were dating, "sleeping around," or had ICSs for
23 sexual contact. (*Id.*) Plaintiff and the other prisoner were "told to [their] face by ADW,
24 DW, CO III, CO IV SSU-Welch, [and] Wilkins" they were being targeted because of their
25 sexual orientation. (*Id.*) Staff have made "really degrading" statements because of
26 Plaintiff's orientation, such as "why don[']t you just be straight and stop all this gay, fag,
27 homo stuff." (*Id.*)

1 In **Count Nine**, Plaintiff alleges since October 12, 2024, he has been in one
 2 detention unit (CDU) after another. (*Id.* at 17.) From October 12 to 29, 2024, while he
 3 was in Cimarron Unit's CDU, Plaintiff "kept telling and showing staff that the food [was
 4 not] correct" in terms of portion size. (*Id.*) Staff told Plaintiff, "Don[']t come to CDU
 5 then," or, "My supervi[s]or DW knows and ordered me to serve this." (*Id.*)

6 On October 29, 2024, Plaintiff was moved to Browning Unit. (*Id.*) Since Plaintiff's
 7 arrival, non-party Sergeant Marrow has been "notified countless times," through
 8 grievances and in person, the food is "not correct." (*Id.*) Sergeant Marrow's response is,
 9 "this is max and you guys don't get certain things due to inmate[s] catching bot[ulism."
 10 (*Id.*) Sergeant Marrow's staff "know[s] fully well" prisoners in Browning Unit are not
 11 getting full nutritional and caloric content and are deliberately failing to supplement the
 12 food "with anything else." (*Id.*)

13 All winter, Plaintiff asked staff for a state-issued jacket for outdoor recreation and
 14 was told such a provision is above staff's "pay grade." (*Id.*) Plaintiff has "asked medical to
 15 help" because the cold weather increases the risk of sickness, but "they" say "just don[']t
 16 go out." (*Id.*) Complex and Unit Deputy Wardens assigned Sergeant Marrow as detention
 17 supervisor, and since Marrow has been in that position, Plaintiff has never received 10
 18 hours of recreation in any week or 14 hours or more of out-of-cell time in a week. (*Id.*)
 19 Between December 17 and 20, 2024, there was no recreation or classes, and between
 20 December 22 and 24, 2024, prisoners were not allowed to shower. (*Id.*) It is "more
 21 common th[a]n not" for prisoners to spend 24 to 72 hours nonstop in their cells. (*Id.*)

22 Plaintiff's pod has spiderwebs "all in the ce[i]ling," and the showers are scrubbed
 23 "for [the] camera," but are never cleaned. (*Id.*) Sewage backs up into the shower. (*Id.* at
 24 18.) Sergeant Marrow "is notified," and "paperwork is filed," notifying Administration of
 25 the conditions of confinement. (*Id.*) Plaintiff has told "all kinds of staff" and non-party
 26 Deputy Warden Martinez about the conditions. (*Id.*)

27 Medical staff have improperly treated Plaintiff's "foot issue" for three years and
 28 cannot diagnose it but want to send him to a specialist to get a second diagnosis. (*Id.*)

1 Plaintiff's foot is getting worse, and he apparently has two abscesses, but "no one wants to
2 ask for outside help." (*Id.*)

3 In **Count Ten**, Plaintiff alleges the following:

4 Plaintiff is in segregation at Browning Unit, which is a maximum custody unit. (*Id.*
5 at 19.) Staff call Browning Unit a "hands on" unit, which means staff personally observe
6 and escort prisoners everywhere while they always keep one hand on the prisoner. (*Id.*)
7 Whenever Plaintiff goes to the medical unit or to or from recreation, he is stripped and told
8 to bend at the waist, reach back, spread his buttocks, squat and cough, lift each foot, and
9 lift his genitals. (*Id.*) Staff also "wand" Plaintiff, check his clothes, and watch him get
10 dressed. (*Id.*) If Plaintiff refuses to strip, he forfeits recreation, medical appointments, and
11 any out-of-cell activity. (*Id.*) Plaintiff claims strip-searching is "just to sexually harass and
12 humil[i]ate" him, which violates the Prison Rape Elimination Act (PREA) and ADCRR
13 policy. (*Id.*)

14 Plaintiff also alleges there are cameras in the showers, in violation of his "PREA
15 and privacy right[s]." (*Id.*) Plaintiff asserts male and female staff have "waved" and seen
16 Plaintiff fully nude in the shower because there are no curtains or doors in the shower. (*Id.*)
17 Plaintiff contends there are "no real penological or security reasons to do both strip and
18 wand" when he is escorted everywhere, never let out of arm's reach or sight of staff, and is
19 always handcuffed when he is out of his cell. (*Id.* at 20.)

20 **IV. Discussion**

21 To prevail on a § 1983 claim, a plaintiff must show (1) acts by the defendants
22 (2) under color of state law (3) deprived him of federal rights, privileges or immunities and
23 (4) caused him damage. *Thornton v. City of St. Helens*, 425 F.3d 1158, 1163–64 (9th Cir.
24 2005) (quoting *Shoshone-Bannock Tribes v. Idaho Fish & Game Comm'n*, 42 F.3d 1278,
25 1284 (9th Cir. 1994)). In addition, a plaintiff must allege he suffered a specific injury as a
26 result of the conduct of a particular defendant and he must allege an affirmative link
27 between the injury and the conduct of that defendant. *See Rizzo v. Goode*, 423 U.S. 362,
28 371–72, 377 (1976).

1 Although pro se pleadings are liberally construed, *Haines v. Kerner*, 404 U.S. 519,
 2 520–21 (1972), conclusory and vague allegations will not support a cause of action, *Ivey*
 3 *v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982). Further, "a liberal interpretation of a
 4 civil rights complaint may not supply essential elements of the claim not initially pled."
 5 *Id.*

6 **A. Individual versus Official Capacity**

7 Plaintiff names Defendants in their individual and official capacities. A suit against
 8 a defendant in his or her *individual* capacity seeks to impose personal liability upon the
 9 official. *Kentucky v. Graham*, 473 U.S. 159, 165–66 (1985). By comparison, a suit against
 10 a defendant in his or her *official* capacity represents only another way of pleading an action
 11 against the entity that employs the defendant. *Id.* at 165. That is, the real party in interest
 12 is not the named defendant, but the entity that employs the defendant. *Id.* To bring a claim
 13 against an individual in his official capacity, a plaintiff must show the constitutional
 14 deprivation resulted from the entity's policy, custom, or practice. *Id.*; *Monell v. Dep't of*
 15 *Soc. Servs.*, 436 U.S. 658, 694 (1978).

16 "[A] suit against a state official in his or her official capacity is not a suit against the
 17 official but rather is a suit against the official's office. As such, it is no different from a
 18 suit against the State itself." *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989)
 19 (internal citation omitted).

20 Plaintiff cannot maintain a lawsuit for damages against ADCRR employees in their
 21 official capacities. *See Hafer v. Melo*, 502 U.S. 21, 27 (1991) ("State officers sued for
 22 damages in their official capacity are not 'persons' for purposes of the suit because they
 23 assume the identity of the government that employs them."); *see also Gilbreath v. Cutter*
 24 *Biological, Inc.*, 931 F.2d 1320, 1327 (9th Cir. 1991) ("[A] state is not a 'person' for
 25 purposes of section 1983. Likewise[,] 'arms of the State' such as the Arizona Department
 26 of Corrections are not 'persons' under section 1983." (internal citation and citation
 27 omitted)).

28 Plaintiff may maintain a lawsuit against ADCRR employees in their official

1 capacity for *prospective* declaratory and injunctive relief because under the doctrine set
 2 forth in *Ex parte Young*, 209 U.S. 123 (1908), the Eleventh Amendment "does not . . . bar
 3 actions for prospective declaratory or injunctive relief against state officers in their official
 4 capacities for their alleged violations of federal law." *Coal. to Defend Affirmative Action*
 5 *v. Brown*, 674 F.3d 1128, 1134 (9th Cir. 2012).

6 Here, Plaintiff has failed to state an official capacity claim. "[I]n an official-capacity
 7 suit the entity's 'policy or custom' must have played a part in the violation of federal law."
 8 *Graham*, 473 U.S. at 166; *see also Los Angeles County v. Humphries*, 562 U.S. 29, 39
 9 (2010) ("[The] 'policy or custom' requirement [from *Monell*] applies in § 1983 cases
 10 irrespective of whether the relief sought is monetary or prospective."). A plaintiff must
 11 allege the policy or custom caused him to suffer constitutional injury. *Sadoski v. Mosley*,
 12 435 F.3d 1076, 1080 (9th Cir. 2006). Plaintiff does not allege any of his injuries were the
 13 result of a specific ADCRR policy, procedure, or custom. The Court will therefore dismiss
 14 Plaintiff's official-capacity claims.

15 **B. Defendants Thornell, McAdorey, Defranko, Lewis, Arredondo,**
 16 **Rodgers, and Ibarra**

17 There is no respondeat superior liability under § 1983, and therefore, a defendant's
 18 position as the supervisor of persons who allegedly violated Plaintiff's constitutional rights
 19 does not impose liability. *See Monell*, 436 U.S. at 691; *Hamilton v. Endell*, 981 F.2d 1062,
 20 1067 (9th Cir. 1992); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). "Because
 21 vicarious liability is inapplicable to *Bivens* and § 1983 suits, a plaintiff must plead that each
 22 Government-official defendant, through the official's own individual actions, has violated
 23 the Constitution." *Iqbal*, 556 U.S. at 676.

24 Plaintiff has not alleged Defendants Thornell, McAdorey, Defranko, Lewis,
 25 Arredondo, Rodgers, and Ibarra personally participated in a deprivation of Plaintiff's
 26 constitutional rights, were aware of a deprivation and failed to act, or formed policies that
 27 resulted in Plaintiff's injuries. Plaintiff has made no allegations at all against these
 28

1 Defendants. Thus, the Court will dismiss without prejudice Defendants Thornell,
2 McAdorey, Defranko, Lewis, Arredondo, Rodgers, and Ibarra.

3 **C. Excessive Force**

4 When an inmate claims prison officials violated his Eighth Amendment rights by
5 using excessive physical force, the relevant inquiry is "whether force was applied in a good-
6 faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm."
7 *Hudson v. McMillian*, 503 U.S. 1, 7 (1992). However, as the Supreme Court has made it
8 clear, not every use of physical force violates the Eighth Amendment:

9 That is not to say that every malevolent touch by a prison guard
10 gives rise to a federal cause of action. *See Johnson v. Glick*,
11 481 F.2d [1028, 1033 (2nd Cir. 1973)] ("Not every push or
12 shove, even if it may later seem unnecessary in the peace of a
judge's chambers, violates a prisoner's constitutional rights").

13 *Id.* at 9.

14 **1. Count One**

15 Insofar as Count One involves an alleged use of excessive force during the
16 December 13, 2023 incident, Plaintiff's allegations are too vague to state a claim. Plaintiff
17 does not identify what occurred immediately before Defendant Kowalski allegedly shoved
18 Plaintiff, so the Court cannot reasonably infer the force used by Kowalski was excessive.

19 Plaintiff also fails to state an excessive force claim with respect to the alleged
20 February 2024 incident. Plaintiff's allegations indicate he tried to push Defendant
21 Kowalski into mud—or at least that Kowalski perceived Plaintiff tried to do so—and
22 Kowalski pushed Plaintiff back, causing Plaintiff to fall but not, apparently, to suffer any
23 injuries. This does not amount to an Eighth Amendment violation. As presented, Plaintiff
24 fails to state an excessive force claim in Count One, and it will be dismissed.

25 **2. Count Two**

26 Plaintiff does not connect any of the allegations in Count Two to any named
27 Defendant. Plaintiff therefore fails to state a claim in Count Two, and it will be dismissed.

28

1 **3. Count Three**

2 Liberally construed, Plaintiff states an Eighth Amendment excessive force claim
3 against Defendant Lopez in his individual capacity. The Court will require Defendant
4 Lopez to answer Count Three.

5 **4. Count Four**

6 In Count Four, Plaintiff does not allege Defendant Earwood used any force against
7 him, let alone physical force. Plaintiff therefore fails to state an excessive force claim
8 against Defendant Earwood.

9 Plaintiff alleges Defendant Lohr left Plaintiff handcuffed for seven hours, which
10 caused bruising to Plaintiff's wrists. However, Plaintiff does not allege he told Defendant
11 Lohr the handcuffs were too tight, and he does not identify Defendant Lohr as one of the
12 staff members whom he asked to remove the handcuffs. As presented, Plaintiff fails to
13 state a claim in Count Four, and it will be dismissed.

14 **D. Retaliation**

15 A viable claim of First Amendment retaliation contains five basic elements: (1) a
16 state actor took some adverse action against an inmate (2) because of (3) the inmate's
17 protected conduct, and such action (4) chilled the inmate's exercise of his First Amendment
18 rights (or the inmate suffered more than minimal harm) and (5) did not reasonably advance
19 a legitimate correctional goal. *Rhodes v. Robinson*, 408 F.3d 559, 567–68 (9th Cir. 2005);
20 *see also Hines v. Gomez*, 108 F.3d 265, 267 (9th Cir. 1997) (explaining a retaliation claim
21 requires an inmate to show (1) the prison official acted in retaliation for the exercise of a
22 constitutionally protected right, and (2) the action "advanced no legitimate penological
23 interest"). The plaintiff has the burden of demonstrating his exercise of First Amendment
24 rights was a substantial or motivating factor behind the defendants' conduct. *Mt. Healthy*
25 *City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977); *Soranno's Gasco, Inc. v.*
26 *Morgan*, 874 F.2d 1310, 1314 (9th Cir. 1989).

27 "Prisoners have a First Amendment right to file grievances against prison officials
28 and to be free from retaliation for doing so." *Watison v. Carter*, 668 F.3d 1108, 1114 (9th

1 Cir. 2012). "The filing of an inmate grievance is protected conduct." *Id.* "A retaliation
 2 claim may assert an injury no more tangible than a chilling effect on First Amendment
 3 rights," and "the mere threat of harm can be an adverse action, regardless of whether it is
 4 carried out because the threat itself can have a chilling effect." *Brodheim v. Cry*, 584 F.3d
 5 1262, 1269–70 (9th Cir. 2009) (citation omitted).

6 **1. Count Five**

7 Liberally construed, Plaintiff states a First Amendment retaliation claim in Count
 8 Five against Defendant Terran in his individual capacity. The Court will require Defendant
 9 Terran to answer Count Five.

10 **2. Count Seven**

11 Plaintiff does not specifically connect any of the allegations in Count Seven to any
 12 named Defendant. Plaintiff has therefore failed to state a claim in Count Seven, and it will
 13 be dismissed.

14 **E. Count Six**

15 In Count Six, Plaintiff alleges his property was taken after officers left it unsecured.
 16 Plaintiff's claim regarding his property would arise, if at all, under the Due Process Clause
 17 of the Fourteenth Amendment. However, the "Due Process Clause is simply not implicated
 18 by a *negligent* act of an official causing unintended loss of or injury to life, liberty, or
 19 property." *Daniels v. Williams*, 474 U.S. 327, 328 (1986). Even unauthorized intentional
 20 deprivations of property do not constitute a violation of procedural requirements of the Due
 21 Process Clause if a meaningful post-deprivation remedy for the loss is available. *Hudson*
 22 *v. Palmer*, 468 U.S. 517, 533 (1984). The availability of a common-law tort suit against a
 23 state employee constitutes an adequate post-deprivation remedy. *Id.* at 534–35. Moreover,
 24 Arizona provides a meaningful and adequate post-deprivation remedy through the prison
 25 grievance system, specifically Department Order 909(8.0). *Dennison v. Ryan*, 522 F.
 26 App'x 414, 417–18 (9th Cir. 2013); *Aldrete v. Ariz. Dep't of Corr.*, 2011 WL 30959, at *7
 27 (D. Ariz. Jan. 3, 2011); *see also Wright v. Riveland*, 219 F.3d 905, 918 (9th Cir. 2000)
 28 (recognizing both state tort claims *and* prison grievance procedures provide adequate post-

1 deprivation remedies). Plaintiff has not stated a § 1983 claim based on the loss of his
2 property. The Court will therefore dismiss Count Six.

3 **F. Counts Eight, Nine, and Ten**

4 Plaintiff does not connect any of the allegations in Counts Eight, Nine, and Ten to
5 any named Defendant. Plaintiff makes allegations in these Counts against CO IV Payne,
6 CO II Barker, CO II Sandoval, Sergeant Marrow, and Deputy Warden Martinez, but he has
7 not named these individuals as Defendants. The Court will therefore dismiss Counts Eight,
8 Nine, and Ten.

9 **V. Warnings**

10 **A. Release**

11 If Plaintiff is released while this case remains pending, and the filing fee has not
12 been paid in full, Plaintiff must, within 30 days of his release, either (1) notify the Court
13 he intends to pay the unpaid balance of his filing fee within 120 days of his release or (2)
14 file a non-prisoner application to proceed in forma pauperis. Failure to comply may result
15 in dismissal of this action.

16 **B. Address Changes**

17 Plaintiff must file and serve a notice of a change of address in accordance with Rule
18 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
19 relief with a notice of change of address. Failure to comply may result in dismissal of this
20 action.

21 **C. Copies**

22 Because Plaintiff is currently confined in an Arizona Department of Corrections,
23 Rehabilitation & Reentry Complex or Private Facility subject to General Order 23-19,
24 Plaintiff can comply with Federal Rule of Civil Procedure 5(d) by including, with every
25 document Plaintiff files, a certificate of service stating this case is subject to General Order
26 23-19 and indicating the date the document was delivered to prison officials for filing with
27 the Court. Plaintiff is not required serve Defendants with copies of every document or
28 provide an additional copy of every document for the Court's use.

1 **If** Plaintiff is transferred to a facility other than one subject to General Order 23-19,
 2 Plaintiff will be required to: (a) serve Defendants, or counsel if an appearance has been
 3 entered, a copy of every document Plaintiff files, and include a certificate stating a copy of
 4 the filing was served; and (b) submit an additional copy of every filing for use by the Court.
 5 *See* Fed. R. Civ. P. 5(a) and (d); LRCiv 5.4. Failure to comply may result in the filing
 6 being stricken without further notice to Plaintiff.

7 **D. Possible Dismissal**

8 If Plaintiff fails to timely comply with every provision of this Order, including these
 9 warnings, the Court may dismiss this action without further notice. *See Ferdik v. Bonzelet*,
 10 963 F.2d 1258, 1260–61 (9th Cir. 1992) (a district court may dismiss an action for failure
 11 to comply with any order of the Court).

12 **IT IS ORDERED:**

13 (1) Plaintiff's Application to Proceed In Forma Pauperis (Doc. 2) is **granted**.

14 (2) As required by the accompanying Order to the appropriate government
 15 agency, Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing fee
 16 of \$14.32.

17 (3) Plaintiff's official-capacity claims are **dismissed**.

18 (4) Counts One, Two, Four, and Six through Ten are **dismissed without**
 19 **prejudice**.

20 (5) Defendants Thornell, McAdorey, Defranko, Lewis, Arredondo, Kowalski,
 21 Ibarra, Rodgers, Lohr, and Earwood are **dismissed without prejudice**.

22 (6) If Plaintiff attempts to amend to address the shortcomings identified in this
 23 Order, the amended complaint must be filed on the court-approved form and retyped or
 24 rewritten in its entirety (including those claims and Defendants that were not dismissed),
 25 and Plaintiff must comply with Rule 15 of the Federal Rules of Civil Procedure and Rule
 26 15.1 of the Local Rules of Civil Procedure.

(7) Defendant Lopez must answer the Eighth Amendment excessive force claim in Count Three. Defendant Terran must answer the First Amendment retaliation claim in Count Five.

(8) The Clerk of Court must send Plaintiff a service packet including the Complaint (Doc. 1), this Order, and both summons and request for waiver forms for Defendants Lopez and Terran.

(9) Plaintiff must complete³ and return the service packet to the Clerk of Court within 21 days of the date of filing of this Order. The United States Marshal will not provide service of process if Plaintiff fails to comply with this Order.

(10) If Plaintiff does not either obtain a waiver of service of the summons or complete service of the Summons and Complaint on a Defendant within 90 days of the filing of the Complaint or within 60 days of the filing of this Order, whichever is later, the action may be dismissed as to each Defendant not served. Fed. R. Civ. P. 4(m); LRCiv 16.2(b)(2)(B)(ii).

(11) The United States Marshal must retain the Summons, a copy of the Complaint, and a copy of this Order for future use.

(12) The United States Marshal must notify Defendants of the commencement of this action and request waiver of service of the summons pursuant to Rule 4(d) of the Federal Rules of Civil Procedure. The notice to Defendants must include a copy of this Order.

(13) A Defendant who agrees to waive service of the Summons and Complaint must return the signed waiver forms to the United States Marshal, not the Plaintiff, **within 30 days of the date of the notice and request for waiver of service** pursuant to Federal Rule of Civil Procedure 4(d)(1)(F) to avoid being charged the cost of personal service.

³ If a Defendant is an officer or employee of the Arizona Department of Corrections, Rehabilitation & Reentry, Plaintiff must list the address of the specific institution where the officer or employee works. Service cannot be effected on an officer or employee at the Central Office of the Arizona Department of Corrections, Rehabilitation & Reentry unless the officer or employee works there.

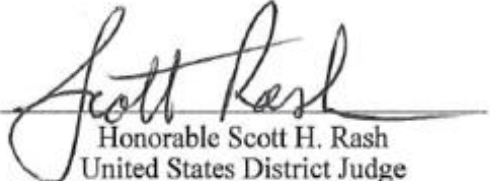
(14) The Marshal must immediately file signed waivers of service of the summons. If a waiver of service of summons is returned as undeliverable or is not returned by a Defendant within 30 days from the date the request for waiver was sent by the Marshal, the Marshal must:

- (a) personally serve copies of the Summons, Complaint, and this Order upon Defendant pursuant to Rule 4(e)(2) of the Federal Rules of Civil Procedure; and
- (b) within 10 days after personal service is effected, file the return of service for Defendant, along with evidence of the attempt to secure a waiver of service of the summons and of the costs subsequently incurred in effecting service upon Defendant. The costs of service must be enumerated on the return of service form (USM-285) and must include the costs incurred by the Marshal for photocopying additional copies of the Summons, Complaint, or this Order and for preparing new process receipt and return forms (USM-285), if required. Costs of service will be taxed against the personally served Defendant pursuant to Rule 4(d)(2) of the Federal Rules of Civil Procedure, unless otherwise ordered by the Court.

(15) Defendants Lopez and Terran must answer the Complaint or otherwise respond by appropriate motion within the time provided by the applicable provisions of Rule 12(a) of the Federal Rules of Civil Procedure.

(16) Any answer or response must state the specific Defendant by name on whose behalf it is filed. The Court may strike any answer, response, or other motion or paper that does not identify the specific Defendant by name on whose behalf it is filed.

Dated this 8th day of July, 2025.



Honorable Scott H. Rash
United States District Judge